UNITED NATIONS

General Assembly

FORTY-EIGHTH SESSION

Official Records

SIXTH COMMITTEE
34th meeting
held on
Monday, 22 November 1993
at 10 a.m.
New York

SUMMARY RECORD OF THE 34th MEETING

Chairman: Mrs. FLORES (Uruguay)

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AGENDA ITEM 148: REQUEST FOR AN ADVISORY OPINION FROM THE INTERNATIONAL COURT OF JUSTICE

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The meeting was called to order at 10.30 a.m.

AGENDA ITEM 148: REQUEST FOR AN ADVISORY OPINION FROM THE INTERNATIONAL COURT OF JUSTICE (A/48/291-S/26242 and Corr.1)

1. Mr. SARDENBERG (Brazil) said that the item under consideration had been included in the agenda of the General Assembly in 1992, pursuant to a decision adopted at the Ibero-American Summit of Heads of State and Government, held in Madrid in July 1992, for the reasons outlined in the annex to document A/47/249.

2. With the rise in criminality, States had felt the need to reinforce measures aimed at preventing criminal acts and ensuring the prosecution and punishment of those responsible for such acts through the strengthening of international judicial cooperation. However, some States had acted as if their jurisdiction could legitimately be exercised beyond their borders, thus impinging upon the jurisdiction of other States. Such conduct was not only contrary to the basic principles of international relations, but also detrimental to the proper functioning of the normal system of judicial cooperation and its future development and enhancement. It could be assumed that the States in question believed that no norm existed which required a different conduct on their part. That presented a legal problem which, in the view of the 21 countries represented at the Ibero-American Summit, could be solved by requesting an advisory opinion from the International Court of Justice.

3. It was surprising that consensus had not been reached on that proposal, since it was entirely logical for the General Assembly, when confronted by a legal question, to request an opinion from the Court. If all States could agree that the issue of the international exercise of criminal jurisdiction should be resolved through international judicial cooperation, and that no State was entitled to arrest or apprehend a person in the territory of another State without its consent, the Court's opinion would not be necessary. However, if differences of opinion persisted, the Court should be asked to carry out its functions. His delegation trusted that a decision in the matter could be reached by general agreement and, to that end, was prepared to consider changes in the wording of the draft resolution contained in document A/47/249/Add.1.

4. Mr. JARAMILLO (Colombia) said that his delegation was convinced that the rule of international law and, in particular, the Charter of the United Nations, should be the determining factors in international relations, and that no body was more qualified to decide and express opinions on legal matters than the International Court of Justice, whose independence ensured impartial and objective decisions.

5. At the Ibero-American Summit of Heads of State and Government, held in Madrid in 1992, the 21 participants had signed a declaration in which they had reaffirmed the principles of international law, rejected any interpretations aimed at recognizing the possibility of applying domestic legislation extraterritorially and decided to ask the General Assembly to request an advisory opinion on the subject from the International Court of Justice.

(Mr. Jaramillo, Colombia)

Colombia supported that position because the International Court of Justice was the main United Nations judicial organ of a universal character whose compulsory jurisdiction it had accepted. However, the Court's capacity to prevent or resolve conflicts had so far been insufficiently utilized, both with regard to controversial cases and to its advisory powers. Since recourse to the Court's opinions was a peaceful means of dispute settlement and facilitated the defusing of crises, Colombia expressed its support for and interest in more frequent recourse to that modality.

6. Furthermore, the incidence of criminality had unquestionably increased significantly, and was reaching ever more alarming proportions. Colombia actively promoted the strengthening of judicial cooperation on the basis of machinery established by the international community, especially legal assistance treaties, the formulation of standardized requests in extradition cases, and so on, which effectively facilitated such cooperation. However, the international community was alarmed at the cases of recourse to unilateral measures and the extraterritorial application of domestic legislation, in contravention of international law. Clearly, a State could not arrest or apprehend a person in the territory of another State without the latter's consent, and transfer him to its own territory to subject him to its criminal jurisdiction. Such conduct was contrary to international law and the principles of sovereign equality, territorial integrity, the rule of law and fulfilment in good faith of international obligations, and also restricted the capacity of States to protect the human rights of their citizens.

7. For the reasons referred to in document A/47/249, the International Court of Justice must determine and specify the rules of international law which applied in that sphere, in order to prevent the entrenchment of practices which prejudiced international judicial cooperation and mutual confidence among States. That would not only contribute to a climate of peaceful and harmonious coexistence among States, but would also add to the Court's judicial precedents, to the benefit of all.

8. Mr. ROZENTAL (Mexico) agreed with the representative of Brazil concerning the need to defend and strengthen the role of the International Court of Justice under the Charter, which was to issue advisory opinions on any legal questions submitted to it by the General Assembly or the Security Council. His Government was especially concerned at the practice of some States which, in lieu of promoting judicial cooperation, attempted to apply domestic legislation extraterritorially in the jurisdiction of other sovereign States. The Organization had dealt with that issue for many years; in 1948, and then in 1971, the Secretary-General had referred to the obligation of States to refrain from exercising jurisdiction in the territory of other States, except with the express consent of the States concerned, and all judicial bodies had been prohibited from exercising jurisdiction over persons apprehended in violation of the territorial sovereignty of other States; the most flagrant case in which that principle applied was that of international abductions.

9. Mexico attached great importance to the work of defining the norms of international law that were applicable in that sphere so as to prevent the

(Mr. Rozental, Mexico)

establishment or consolidation of unilateral practices that would undermine international judicial cooperation and mutual trust among States. Respect for territorial sovereignty was inherent in the existence of an international society ruled by law, as was recognized in the Charter of the United Nations and the decisions of the International Court of Justice. The Security Council had recognized that principle in the specific case of abductions, in resolution 138 (1960). Although some countries had established the principle that no one brought to justice by means of abduction could be prosecuted, other States, although they regarded abduction as a violation of international law which gave rise to reparation, maintained their right to judge the alleged offender. That type of situation had led to initiatives to reform domestic law, not only so as to prohibit abductions, but also so as to ensure that no one could exercise jurisdiction over the alleged offender and so as to order repatriation.

10. Over the past 40 years there had been an unprecedented development of international judicial cooperation and hundreds of treaties had been concluded that were linked with some aspect of that cooperation. For that reason it was important to allay any doubts persisting in that regard, and Mexico believed that States should resort more frequently to the International Court of Justice, not only to resolve their differences but also to prevent the emergence of disputes among States. Mexico supported the initiative of the Secretary-General that he should be authorized to seek advisory opinions from the International Court of Justice. It also shared the view of the representative of Brazil that proposals for the consideration of the topic in a constructive manner should be studied at an appropriate time; for the time being, his delegation suggested that consideration of the item should be deferred and that it should be included in the provisional agenda of the forty-ninth session of the General Assembly.

11. Mrs. GAO Yamping (China) said that respect for the sovereignty and territorial integrity of States was a fundamental principle of international law; that principle was the basis for normal international relations and, therefore, was very important for the maintenance of international peace and security. It was enshrined in the Charter of the United Nations as a basic obligation of all Member States.

12. Personal and territorial jurisdiction were the very expression of the sovereignty of a State. It was citizens therefore indisputable that Mexico had exclusive and final authority over its citizens residing within its territory. Any unilateral action taken in its territory without its prior consent, regardless of the purposes sought, would infringe on Mexico's sovereignty and would constitute a violation of international law.

13. The illicit traffic of narcotic drugs harmed human society and brought serious political, economic and cultural consequences. The international community strongly opposed and condemned it. Within the United Nations, international instruments had been concluded to combat it, such as the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Those instruments provided a legal

(Mrs. Gao Yamping)

basis and safeguards for the strengthening of the international cooperation that was needed to combat effectively the illicit traffic of drugs and were in line with the principle of "try or extradite" (aut dedere aut judicare). In other words, if a country did not extradite an offender to another country, it had the obligation to prosecute and punish him.

14. Under the current regime established by international law, it would be very difficult for criminal offenders involved in drug trafficking to escape the punishment of the law. Her delegation believed, however, that the jurisdiction of States, in particular extraterritorial jurisdiction, should be exercised in that sphere with the utmost prudence. Prior consent should always be obtained from the other State concerned, because any impropriety in the exercise of such jurisdiction could undermine the sovereignty of that State and give rise to serious consequences which would ultimately undermine international cooperation.

15. China believed that the Committee's consideration of the item would be of value, and hoped that the issue would soon be resolved in a just and reasonable manner.

16. Mr. MIRZAEE YENGEJEH (Islamic Republic of Iran) said that the principles of the sovereign equality and territorial integrity of States were fundamental principles of international law which formed the cornerstone of contemporary international relations. Those principles had been incorporated in a number of international instruments such as the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of International Disputes and the Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations.

17. The old theory of absolute sovereignty had declined in the contemporary world, which was no longer an "anarchy of sovereignties" but could now be characterized as a society of interdependent States. Countries were bound not only by freely accepted treaty obligations but also by the generally accepted principles of customary international law. Moreover, sovereignty created international law, and that law recognized sovereignty as its foundation. In other words, the law of nations arose directly from the consent of States: it was a law of coordination, not of subordination. Consequently, observance of international law did not depend on the discretionary will of States, since when they undertook certain obligations through treaties, they were bound to fulfil them. The principle pacta sunt servanda was a universally recognized principle.

18. It was universally recognized that in the case of a conflict between the domestic law of a State and international law, the latter prevailed. That had been the conclusion reached by the Permanent Court of International Justice in the Danzig case. Apart from some particular situations, in respect of which public international law provided for detailed rules concerning the exercise of extraterritorial jurisdiction, a State could, through bilateral agreements, allow another State to exercise jurisdiction in its territory. In such cases, however, the prior consent of the State granting authorization was essential.

(Mr. Mirzaee Yengejeh, Islamic Republic of Iran)

19. With regard to the item under consideration, his delegation wished to stress that public international law did not regulate the apprehension of an accused person by a given State in the territory of another State but that the consent of the latter State was undoubtedly required. It was clear that, without that consent, the apprehension or arrest of accused persons constituted a violation of the principles of international law already mentioned. The Security Council, in resolution 138 (1960) had stated that such actions "which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security".

20. His delegation was prepared to support any step that the Committee might wish to take in order to elevate the rule of law in international relations.

The meeting rose at 11.10 a.m.

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General Assembly

FORTY-EIGHTH SESSION

Official Records

SIXTH COMMITTEE
35th meeting
held on
Tuesday, 23 November 1993
at 10 a.m.
New York

SUMMARY RECORD OF THE 35th MEETING

Chairman: Mrs. FLORES (Uruguay)

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The meeting was called to order at 10.35 a.m.

AGENDA ITEM 145: REPORT OF THE COMMITTEE ON RELATIONS WITH THE HOST COUNTRY (A/48/26)

1. Mr. SHAMBOS (Chairman of the Committee on Relations with the Host Country), introducing the Committee's report (A/48/26), said that the document followed the format used in previous years. Thus, it consisted of four sections, the last of which contained the Committee's recommendations and conclusions. In his view, the Committee continued to be an important forum in which Member States had the opportunity to resolve, through frank and constructive debate, problems related to the functioning of their permanent missions. He reiterated his thanks to the Committee members, the Host Country Section of the United States Mission to the United Nations, and the New York City Commission for the United Nations, Consular Corps and International Business for their support and cooperation.

2. Mr. AHMED (Iraq) said that, although much time had passed since the events of August 1990, the Permanent Mission of Iraq to the United Nations and its staff were still facing difficulties as a result of the arbitrary procedures applied by the host country. Among those measures was the freezing of Iraqi assets, including those allocated for the purpose of meeting the current expenses of the Mission, such as rents, staff salaries and payments for other services.

3. That was a matter of great concern to Iraq because, despite the well-founded arguments it had presented to the host country, that country was refusing to release the funds; its representative limited himself to asserting that freezing the assets was in accordance with the provisions of the Charter of the United Nations and the Security Council resolutions relating to the economic sanctions imposed on Iraq. His delegation wished to remind the Committee members that neither the resolutions adopted by the Security Council in 1990 nor its resolution 647 (1991) had made any reference to property of the Permanent Mission of Iraq. Properties of permanent missions to the United Nations enjoyed immunity by virtue of the Headquarters Agreement and other international legal instruments by which the host country was bound. The measures taken by the United States authorities in application of its national legislation could not under any circumstances take precedence over the Headquarters Agreement and international conventions.

4. His delegation therefore hoped that the sum of one million dollars, belonging to the Permanent Mission and transferred to the Bank of New York by the Central Bank of Iraq, would be unfrozen as rapidly as possible. Those funds were intended to pay the current expenses of the Permanent Mission of Iraq in New York and there was no reason for the United States authorities to be concerned that they might be used for other purposes.

(Mr. Ahmed, Iraq)

5. In conclusion, he expressed his satisfaction at the lifting of travel and other restrictions referred to in the report and said his delegation was confident that the Committee could resolve pending problems in accordance with international law.

6. Mr. DEREYMAEKER (Belgium), speaking on behalf of the European Union, said that the work carried out by the Committee on Relations with the Host Country demonstrated once again its ability to deal with difficult issues falling within its competence and to resolve practical problems in accordance with the applicable legal norms. Those positive results had been the result also of efforts by other bodies which had provided valuable services to the diplomatic community in New York, in particular the Permanent Mission of the United States to the United Nations and the New York City Commission for the United Nations and the Consular Corps.

7. The report of the Committee on Relations with the Host Country (A/48/26) provided a detailed description of the matters considered in 1993. With regard to the security of missions and the safety of their personnel, he welcomed the dialogue maintained between the United Nations and the local authorities, which had made possible the application of measures whose scope went beyond the limits of the Headquarters administrative district. He also welcomed the organization of the seminar entitled "Survival in New York", held at Headquarters on 13 May 1993.

8. A substantial part of the Committee's report was concerned with the responsibilities of the permanent missions and their personnel, especially in terms of financial obligations. Failure to pay a debt on the part of a diplomat, a diplomatic mission or a United Nations staff member was certainly a serious problem, since the maintenance of harmonious relations with the inhabitants and authorities of the host country required strict compliance with all financial obligations. Nevertheless, that should not exclude the possibility of special measures in clear cases of humanitarian need. In that connection, the European Union encouraged the Working Group on Indebtedness to continue its work with a view to finding appropriate solutions, perhaps by establishing a trust fund.

9. With regard to transportation, he reminded the Committee of the importance the European Union attached to the application of articles IV and V of the Headquarters Agreement and articles 29 to 31 of the 1961 Vienna Convention. It was to be hoped that the host country would adopt such measures as were necessary to meet fully the obligations it had undertaken in that respect.

10. In conclusion, he noted that the European Union supported the Committee's recommendations and conclusions as presented in paragraph 58 of its report.

11. Mr. ORDZHONIKIDZE (Russian Federation) said that the Committee on Relations with the Host Country had been established over 20 years earlier and during that time had been an active mediator, striving to solve problems affecting the missions of Member States. In essence, its objective had always been to bring about conditions favourable to the normal functioning of the United Nations and the permanent missions accredited to the Organization. It was therefore important that the Committee should continue to concentrate on solving practical problems, as they arose, in a spirit of harmony and by means of international cooperation. Moreover, the currently prevailing climate of mutual understanding would not have been possible without the positive attitude shown by both the diplomatic corps in New York and the authorities of the host country.

12. In that connection, he expressed his gratitude to the New York City Commission for the United Nations and the Consular Corps, the permanent missions of Member States and the competent United States authorities for their efforts to solve problems. If the current orientation continued, those efforts would no doubt help to create a more favourable public image of the Organization.

13. The Committee's vast programme traditionally included very diverse human relations issues. In some cases, for example those concerning the protection of permanent missions and their staff, the solution of delicate problems connected with indebtedness, and the lifting of certain travel restrictions, the measures taken had been positive. Other matters remained unresolved. Noteworthy among them was the lifting of travel restrictions for the diplomatic staff of various Member States and some Secretariat staff, the granting of multiple-entry visas, the establishment of special lines for diplomats at Kennedy Airport and the simplification of customs and immigration procedures. His delegation hoped that those questions would be treated with the same constructive spirit that currently prevailed and in accordance with the norms of international law. For their part, the diplomats accredited to the United Nations must show strict respect for the laws and traditions of the host country.

14. His delegation endorsed the recommendations and conclusions of the Committee contained in the final section of its report (A/48/26). In that connection, it attached particular importance to rationalization of the Committee's work.

15. Mr. RIVERO (Cuba) said that his delegation had studied with interest the report of the Committee on Relations with the Host Country (A/48/26), which described very clearly the important activities recently carried out by that Committee. Cuba fully supported its work and considered that it should not be affected in any way by the rationalization and restructuring measures being carried out within the United Nations.

16. His delegation supported the recommendations and conclusions contained in the Committee's report, in particular the ideas contained in subparagraphs (b) and (c) of paragraph 58. As far as Cuba itself was concerned, over the preceding months there had been repeated so-called "demonstrations" near the premises of its Permanent Mission, which had in fact been acts involving harassment, provocation and even threats against Cuban diplomats and their families, including children (see A/48/26, para. 20). Those acts, which had

(Mr. Rivero, Cuba)

been brought to the attention of the host country and the Committee, had had an unquestionable effect on the normal activities of the Permanent Mission of Cuba to the United Nations and had also affected the safety of its staff. His delegation trusted that the host country authorities, in compliance with their obligations and on the basis of the Committee's recommendations, would adopt appropriate measures to bring an end to the situation.

17. Mr. ROSENSTOCK (United States of America) said that his country would continue to comply with the obligations incumbent upon it as host country. With regard to the freezing of assets, that had been done in conformity with Security Council resolutions and the situation would not change until the activity which had prompted their adoption ceased. In no case and at no time had the activities of any mission been impeded.

18. Concerning the problems which might have been caused by some demonstrations, a phenomenon inherent in a free and open society in which freedom of opinion and association were respected, there did not seem to be a significant current of opinion within the United Nations in favour of restricting those rights. His delegation had met with representatives of the mission concerned and after looking at the available information had decided that its activities had not been obstructed. In case any incident did occur the missions concerned should communicate the facts to the host country as soon as possible with a view to solving the problems which might arise. He was convinced that there were very few problems that could not be resolved with goodwill. The United States would continue to work at the bilateral level, as well as in the Committee on Relations with the Host Country, with missions which encountered, or believed they had encountered, difficulties.

19. Mr. RIVERO (Cuba) said that his delegation welcomed the statement made by the representative of the host country to the effect that that country would continue to comply with its obligations and would take full account of the Committee's recommendations, particularly those regarding the problems affecting the Cuban mission. It should be noted that his delegation had not proposed restricting the right to freedom of expression in any way; its request related not to political opinions, but to the threatening way in which they were expressed.

20. The CHAIRMAN said that the Committee had concluded its debate on agenda item 145.

AGENDA ITEM 141: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued) (A/48/268)

21. Mr. AL-SUWAIDI (United Arab Emirates), speaking in his capacity as Chairman of the Working Group set up under resolution 46/52, said that the Working Group had considered the report of the Secretary-General (A/48/268) at its meeting of 17 November 1993. Several delegations had recognized the need to elaborate norms and principles relating to a new international economic order and had observed that they could take the form of rules applicable to specific areas of

(Mr. Al-Suwaidi, United Arab Emirates)

economic activity or of general principles, non-binding in nature. Nevertheless, some of those delegations had considered that in order to reach a consensus on the question, States and international organizations needed more time to think about the most recent developments in the field, especially since it would be necessary to consider the item on the basis of a new document which might be based on a re-examination of the study by the United Nations Institute for Training and Research contained in annex III to document A/39/504/Add.1. Other delegations had expressed the view that while that study might be useful there should be a completely new approach and the item should therefore remain on the agenda of the General Assembly, which would facilitate preparation of the document in two or three years. However, other delegations had emphasized that the item had been put on the General Assembly's agenda at a time of economic confrontation. There was currently a new and flexible approach. In addition, there was no consensus on the need to proceed with substantive work on the topic. In those circumstances it would be difficult for a working group to do any useful work to that end. They had therefore proposed that the item should be removed from the agenda.

22. During the discussions further proposals had been made, some of which had been supported within the Working Group, in particular the proposal that consideration of the item should be deferred for a reasonable period so that Governments and international organizations could reflect on a new document which would be a basis for further discussion of the subject. In that connection, there had been general agreement that if the item could be reformulated in a way which addressed the principles of international economic relations in the context of international economic cooperation and development, it might be possible to retain it on the agenda of the General Assembly.

23. The CHAIRMAN said that the Committee had concluded its debate on agenda item 141.

AGENDA ITEM 152: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/C.6/48/L.12)

24. Mr. van BOHEMEN (New Zealand), introducing draft resolution A/C.6/48/L.12, said that the delegations of Argentina, Bulgaria, the Czech Republic, Ecuador, Finland, Greece, Italy, the Netherlands, Nigeria and Romania had joined the list of sponsors. The draft did not prejudge the nature of the instrument which would be negotiated and reflected the consensus within the Working Group, namely, that an ad hoc committee open to all Member States should be established to elaborate an international convention dealing with the security of United Nations and associated personnel, and should hold a session for two weeks in March and April 1994 and possibly a further session of two weeks in August 1994.

The meeting rose at 11.35 a.m.